

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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2008 AUG -4 PM 2:45

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Procedural CITE AUTHORITY: 5-5-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: Procedure for Payment of Unused Sick Leave to Employees

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 9/2/08 AT 9:30am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, WV 25305
donna.m.lipscomb@wv.gov
304-558-3392

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.60

Agency: Department of Administration	Title Number: 148
Rule Type: Procedural	Cite Authority: 5-5-6

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The proposed procedural rules are being promulgated as a result of Senate Bill 476 that passed the Legislature during the 2008 regular session and House Bill 216 that passed during the second extraordinary session. The proposed rules outline the application procedures to be used when employees seek payment for their unused sick leave; spending unit certification requirements; Cabinet Secretary authorization; payment procedures; repayment of funds; and record maintaining and reporting. The rules are new, therefore, strike throughs and inserts are not included.

FILED

148CSR21

2008 AUG -4 PM 2: 45

**TITLE 148
PROCEDURAL RULE
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE SECRETARY**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 21
PROCEDURE FOR PAYMENT OF UNUSED SICK LEAVE TO EMPLOYEES**

§148-21-1. General.

1.1. Scope. - These procedural rules shall set forth the procedures for payment to eligible employees for accrued and unused sick leave.

1.2. Authority. - W.Va. Code §5-5-6

1.3. Filing Date -

1.4. Effective Date -

§148-21-2. Definitions

2.1. "Application Date" - means the date the employee's certified Application for Payment of Unused Sick Leave & Reimbursement Agreement is received by the Secretary.

2.2. "Certified Application" - means an Application for Payment of Unused Sick Leave and Reimbursement Agreement that has been certified by the Head of the Spending Unit for which the employee works certifying: that the employee is an eligible employee; the number of unused sick leave days available for which the employee may be paid; the employee's current annual budgeted salary; the number of sick days the employee would have remaining after compensation for available unused sick days; and the WV FIMS codes from which the employee is paid.

2.3. "Eligible Employee" - means any regular full-time active employee of the state or any spending unit of the state who is entitled upon retirement to credit his or her accrued annual and sick leave for extended insurance coverage as provided in section thirteen, article sixteen of this chapter, and who has accumulated at least sixty-five days of unused sick leave.

2.4. "Finance Director"- means the Director of the Division of Finance for the Department of Administration.

2.5. "Secretary" - means the Cabinet Secretary for the Department of Administration.

2.6. "State Spending Unit" - means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

§148-21-3. Employee Application Procedure

3.1. Any eligible employee wishing to be paid for his/her unused sick leave shall complete the Application for Payment of Unused Sick Leave & Reimbursement Agreement form established by the Department of Administration and submit it to the head of his/her spending unit.

3.2. Said application shall include the following information:

- 1) The date on which the employee began employment with the State of West Virginia, the employee's years of service and the spending unit with which the employee is currently employed.
- 2) The number of unused sick days for which the employee is requesting payment.
- 3) The total number of unused sick days the employee has accumulated at the date of application.
- 4) The number of sick days the employee would have remaining after compensation for available unused sick days. Must maintain a balance of 50 days.
- 5) The current budgeted annual salary of the employee seeking payment for unused sick leave.
- 6) The current daily rate of pay of the employee seeking payment for unused sick leave. An explanation of how the rate of pay was computed.
- 7) All sources of funds from which the employee seeking payment for unused sick leave is paid, including the WV FIMS codes.

3.3. Any employee wishing to be paid for his/her unused sick leave shall complete the appropriate state and federal tax forms indicating the amount of tax they choose to withhold prior to being compensated for their requested unused sick leave days. Said forms are entitled IRS Form W-4 and State of West Virginia form WV/IT-104.

§148-21-4. Spending Unit Certification

4.1. The authorized representative of the spending unit for which the employee works shall review the employee's Application for Payment of Unused Sick Leave & Reimbursement Agreement. The authorized representative shall verify the eligibility of the employee and the number of unused sick days available for the employee requesting payment to the head of the spending unit.

4.2. The head of the spending unit shall then certify to the Secretary, within 10 days from receipt of the application, that the employee requesting payment for his/her unused sick leave meets or does not meet all eligibility requirements. The head of the spending unit must also certify to the Secretary the number of unused sick leave days the employee has available for which he/she may be paid; the employee's annual budgeted salary; the number of sick days the employee would have remaining after compensation for available unused sick days; the employee's daily rate of pay; and the sources of funds from which the employee is paid, including the WV FIMS codes.

4.3. The Secretary shall receive all Applications for Payment of Unused Sick Leave & Reimbursement Agreements for payment of unused sick leave once it has been certified by the head of the spending unit for which the employee works.

§148-21-5 Cabinet Secretary Authorization

5.1. Upon receipt of the certified Application for Payment of Unused Sick Leave & Reimbursement Agreement, the Secretary shall approve or disapprove the Application for Payment of Sick Leave and Reimbursement Agreement based upon the certified facts in the application within 10 days.

5.2. In the event that the Application for Payment of Unused Sick Leave & Reimbursement Agreement is disapproved by the Secretary, the Secretary shall advise the employee in writing that his/her Application was denied setting forth the reasons for said decision.

5.3. The Secretary shall process all certified Applications for Payment of Unused Sick Leave & Reimbursement Agreements which have been approved according to the application date.

5.4. Following approval, the Secretary shall provide the original Application for Payment of Unused Sick Leave and Reimbursement Agreement to the Finance Director. The Finance Director shall provide completed documentation to the West Virginia Auditor.

§ 148-21-6 Payment Procedure

6.1. Upon receipt of the approved Application for Payment of Unused Sick Leave & Reimbursement Agreement, the Head of the Spending Unit shall direct his/her payroll clerk to confirm with the Finance Director that funds are available in the State Employee Sick Leave Fund. If funds are available, the Finance Director shall remit payment to the employee for the requested number of unused sick leave days within ten (10) days.

6.2. Upon payment to the employee, the payroll clerk for the spending unit shall transfer funds into the State Employee Sick Leave Fund from the funds from which the employee is paid, in whole or in part, on a pro rate basis within ten (10) days.

6.3. Payments shall be made to employees who have met all certification requirements only once per fiscal year on either the pay day immediately following the first full pay period in July or the first full pay period in December, as long as funds are available in the State Employee Sick Leave Fund. The employee shall be paid at a rate equal to one quarter of their usual rate of daily pay as set forth in W.Va. Code §5-5-6.

6.3. The West Virginia State Auditor shall include the funds received from the employee as wages on the employee's tax form but shall establish a separate code to reflect that the income does not effect the calculation of the employee's pension. Any payment for unused sick leave may not be a part of the employee's final average salary computation.

6.4. In the event that the State Employee Sick Leave Fund has insufficient funds to pay the employees who have applied for payment in a fiscal year, then the employees who do not receive payment are eligible for payment in the next fiscal year without being required to reapply. Funds shall be paid in order according to the "application date" unless the employee chooses to withdraw the application prior to the next fiscal year. The Finance Director shall maintain the approved applications until such funds are available for payment.

6.5. In the event that the State Employee Sick Leave Fund has insufficient funds to pay the employees who have applied for payment in a fiscal year, the Head of the Spending Unit shall re-certify the Application for Payment of Unused Sick Leave & Reimbursement Agreement information to the Secretary prior to processing said Application for Payment of Unused Sick Leave & Reimbursement Agreement the following fiscal year to assure the employee is still eligible and meets all requirements of law.

6.6. An employee who has been paid for their unused sick leave shall not be permitted to reacquire any sick leave days for which he/she received payment.

6.7. The Secretary, or his/her designee, shall direct the Head of the Spending Unit to deduct from the employee's sick leave balance the number of sick leave days for which the employee was paid. The Head of the Spending Unit shall verify in writing to the Secretary or his/her designee the number of days that were deducted from the employee's

sick leave balance.

§148-21-7. Repayment of funds

7.1. Prior to an employee receiving payment for unused sick leave, he/she must first contract with the Department of Administration and agree to reimburse the State Employee Sick Leave Fund for the amount exchanged plus twelve percent interest per annum if the employee elects to separate from employment within sixty months of the date of the exchange. Separation from employment with the State of West Virginia does not include death or retirement.

7.2. The Secretary shall pursue collection of the obligation either by himself/herself or by contracting with a collection agency.

7.3. The State Auditor shall notify the Secretary when an employee who received payment for unused sick leave separates from employment so that the Secretary may pursue collection of the obligation. The Auditor shall provide reports to the Director of Finance identifying all employees who received compensation for their unused sick leave to assure an employee does not receive compensation more than once per year.

§148-21-8. Record maintaining and reporting

8.1. Each spending unit shall maintain an accurate record of sick leave for every individual employed in that spending unit. Said record should be kept up to date and available to the Secretary upon request.

8.2. Each spending unit shall provide the Secretary, or his/her designee, a report of all sick days taken and all sick days accumulated for every employee in it's unit by the last day of June of each fiscal year. Said annual report shall also identify the total sick leave days available to each employee.

8.3. The Secretary, or his/her designee, shall maintain sick leave records for all spending units.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedure for Payment of Unused Sick Leave to Employees

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, WV 25305

Phone Number: 304-558-3392 Email: donna.m.lipscomb@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The adoption of the proposed procedural rules will have no fiscal impact on the State of West Virginia. The procedural rules simply outline the procedures to be followed when employees wish to be compensated for their unused sick leave as authorized by the WV Code. To determine the fiscal impact of the Statutory provisions, please see the fiscal note that was submitted during the legislative session.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: Procedure for Payment of Unused Sick Leave to Employees

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 8-4-08

Signature of Agency Head or Authorized Representative
